

STATE OF INDIANA
COUNTY OF MARION

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IN THE MARION CIRCUIT COURT
CAUSE NO. 49C01-9211-CP-4036

STATE OF INDIANA,

Plaintiff,

v.

BLOSSOM CHEVROLET, INC.,
an Indiana corporation,

Defendant.

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FILED

JAN 27 1994

Faye L. Mower

CONSENT JUDGMENT

Plaintiff, the State of Indiana, by Attorney General Pamela Carter and Deputy Attorneys General Mary M. Brown and Wayne A. Harris, having filed its Verified Complaint for Injunction against Defendant, Blossom Chevrolet, Inc., and Defendant, without any admission of liability, and desiring to resolve the issues raised in Plaintiff's complaint, and to avoid the uncertainty and cost of proceeding further with litigation, does hereby willingly and voluntarily agree to enter into this Consent Judgment without trial and adjudication of any issue of fact or law.

Now, therefore, by consent and agreement of the parties hereto, it is ORDERED, ADJUDGED AND DECREED as follows:

INJUNCTIVE RELIEF

1. Pursuant to Ind. Code 24-5-0.5-4(c)(1), Defendant, its agents, representatives, employees, successors and assigns, and all persons acting on Defendant's behalf, through any corporate or business name or device, shall be and hereby are ENJOINED from representing that:

a. purchasers of motor vehicles are obligated to pay an intangibles tax assessed by the State of Indiana unless there is a statute or regulation that requires such payment by the purchaser.

b. it is authorized, as agent for the State of Indiana, to collect funds from purchasers of motor vehicles for payment of an intangibles tax assessed by the State of Indiana unless a law or regulation, adopted or promulgated hereafter, imposes an intangibles tax on purchasers of motor vehicles.

c. all funds collected from purchasers of motor vehicles for payment of an intangibles tax will be remitted to the State of Indiana unless a law or regulation, adopted or promulgated hereafter, designates, requires, or permits persons situated similarly to the Defendant to collect funds for the payment of an intangibles tax.

d. the final negotiated retail selling price of its motor vehicles, excluding taxes, includes the entire amount of profit to be received by Defendant, if Defendant will receive a profit from any charge represented as an intangibles tax.

2. Pursuant to Ind. Code 24-5-0.5-4(c)(1), within thirty (30) days of the entry of this Consent Judgment, Defendant shall provide Plaintiff with a list of all customers who were charged an intangibles tax on or after January 1, 1986. This list will be incomplete because Defendant did not retain records on all those transactions. Said list shall include the name, last known address and the amount of any payment denominated as an intangibles tax. Said list shall also indicate whether Defendant has made a

voluntary refund to said customer. Pursuant to the trial court's previous order, Plaintiff agrees to keep said customer list confidential and will not disclose the list to any other person or entity and will use said list only for purposes of verifying or attempting to submit a refund to the customers identified on the list.

3. Pursuant to Ind. Code 24-5-0.5-4(d), the application of each contract between the Defendant and each purchaser of a motor vehicle whose purchase from Defendant occurred on or after January 1, 1986, who paid any sum denominated in a motor vehicle purchase contract as an intangibles tax, is limited so that any provision contained in said contract which obligates said purchaser to pay any sum so denominated is declared VOID and UNENFORCEABLE.

4. Pursuant to Ind. Code 24-5-0.5-4(c)(1), Defendant shall be and hereby is enjoined from failing to refund the full amount of any payment tendered by each purchaser of a motor vehicle whose purchase from Defendant occurred on or after January 1, 1986, for payment of any sum denominated in a motor vehicle purchase contract as an intangibles tax.

5. Defendant shall make a lump sum deposit of restitution to Plaintiff in accordance with paragraph twelve (12) of this Consent Judgment.

6. Plaintiff shall administer the payment of all restitution.

7. For each claim for an intangibles tax refund received within six (6) months of the date of the last publication

as provided for in paragraph nine (9), that the Plaintiff, by the Consumer Protection Division of the Office of the Attorney General, determines to be valid, the Plaintiff shall provide the consumer with restitution from the lump sum deposit of Defendant outlined in paragraph twelve (12). No restitution shall be paid to individuals who previously received a refund from Defendant.

8. If the lump sum deposit provided for in paragraph twelve (12) proves insufficient to satisfy the total of valid consumer restitution claims, the administration fee identified in paragraph thirteen (13), and the funds represented by the net uncashed checks identified in paragraph eleven (11), then upon Plaintiff's demand, Defendant shall make an additional lump sum payment to Plaintiff, within fourteen (14) days of said demand, that will satisfy the remaining claims.

9. Pursuant to Ind. Code 24-5-0.5-4(c)(1), the Defendant is ordered to place only a display advertisement in each of the following publications in the manner specified below:

a. The Indianapolis Star and The Indianapolis News:

A three (3) column by four (4) inch advertisement placed in the sports sections of the Sunday and Wednesday editions for three (3) consecutive weeks;

b. The display advertisement shall be set forth in at least ten (10) point type with a sixteen (16) point headline and shall first appear in the

aforementioned publications no later than fourteen (14) days following the entry of this Consent Judgment.

- c. The text of the advertisement shall be identical to the text set forth in Exhibit "A" of this Consent Judgment which is attached hereto and incorporated herein.
- d. No other notice shall be required of Defendant.

MITIGATION OF RESTITUTION

10. Defendant shall furnish Plaintiff with copies of cancelled checks for each and every refund of an intangibles tax Defendant previously paid to a consumer who purchased a motor vehicle from Blossom Chevrolet, Inc. on or after January 1, 1986. Verification by cancelled check alone shall serve as the basis for determining Defendant's mitigation of restitution. Defendant shall also make available for inspection by Plaintiff the actual cancelled checks. No restitution shall be paid to individuals who previously received a refund from Defendant

11. Defendant shall also furnish Plaintiff with copies of each and every check Defendant mailed to a consumer as a refund of an intangibles tax, which the United States Postal Service returned uncashed to Defendant as undeliverable or for any other

reason. At the end of the claim period identified in paragraph seven (7), Defendant shall pay to the Plaintiff, or Plaintiff shall retain from the lump sum deposit identified in paragraph twelve (12), a sum equal to the total of those funds represented by said uncashed checks, less any sum paid to the consumers identified by said uncashed checks, and that sum shall be administered in accordance with paragraph sixteen (16).

RESTITUTION

12. Pursuant to Ind. Code 24-5-0.5-4(c)(2) judgment for restitution is granted in favor of Plaintiff, the State of Indiana, on behalf of all purchasers of motor vehicles whose purchase occurred on or after January 1, 1986, and who paid any sum denominated in a motor vehicle purchase contract as an intangibles tax. Because Defendant represents that it does not possess documentation to determine the name of each individual from whom an intangibles tax was collected, nor the specific amount of the intangibles tax collected from each individual, Defendant agrees to make an initial lump sum payment in the amount of Forty Thousand Dollars (\$40,000.00) for payment of valid consumer restitution claims, the administration fee identified in paragraph thirteen (13), and the funds represented by the uncashed checks identified in paragraph eleven (11).

13. At the end of the Plaintiff's administration of valid consumer restitution claims, Plaintiff shall retain Ten Thousand Dollars (\$10,000.00) for administration expenses from the balance of the Defendant's lump sum deposit identified in Paragraph twelve (12).

14. In the event the lump sum deposit identified in paragraph twelve (12) is insufficient to satisfy the total of valid consumer restitution claims, the administration fee identified in paragraph thirteen (13), and the net funds represented by the uncashed checks identified in paragraph eleven (11), then in accordance with paragraph eight (8), Defendant shall make an additional lump sum payment sufficient to satisfy the total of valid consumer restitution claims, the administration fee identified in paragraph thirteen (13), and the funds represented by the uncashed checks identified in paragraph eleven (11).

15. In the event the lump sum deposit identified in paragraph twelve (12) is in excess of the amount required to satisfy the total of valid consumer restitution claims, the administration fee identified in paragraph thirteen (13), and the net funds represented by the uncashed checks identified in paragraph eleven (11), the Plaintiff shall return the excess to the Defendant nine months following the date of the last publication identified in paragraph nine (9).

16. The Office of the Indiana Attorney General shall distribute the restitution provided for in paragraph twelve (12), to the purchasers of motor vehicles entitled thereto, by warrants issued by the Auditor of the State of Indiana. Pursuant to Ind. Code 4-10-10-1, all warrants issued upon said funds that remain outstanding and unpaid for a period of two (2) years from December 31, of the year of issue, shall be declared cancelled. Upon cancellation of any unpaid warrant, the funds attributable thereto

shall be deposited in the Attorney General's "Property Custody Fund" established by Ind. Code 32-9-1-24. Thereafter, such funds will be subject to claims and to the presumption of abandonment as other property held in the Property Custody Fund.

COSTS

17. Pursuant to Ind. Code 24-5-0.5-4(c)(3), judgment is granted in favor of Plaintiff, the State of Indiana, for its reasonable costs of investigation and prosecution in the amount of Twelve Thousand Dollars (\$12,000.00).

PAYMENT

18. The restitution provided for in paragraph twelve (12) and the costs of investigation and prosecution provided for in paragraph seventeen (17) shall be paid to Plaintiff in two lump sum payments. One payment shall be in the amount of Twelve Thousand Dollars (\$12,000.00) made payable to the State of Indiana for its cost of investigation and prosecution. The second payment shall be in the amount of Forty Thousand Dollars (\$40,000.00) and shall be payable to the State of Indiana for the purpose of providing restitution. Said payments shall be remitted to the State of Indiana within thirty days (30) of the execution of this Consent Judgment.

MODIFICATION OF JUDGMENT

19. By entering into this Consent Judgment, Plaintiff has relied on information supplied by Defendant. In the event subsequent information reveals that the amount of restitution set forth in paragraph twelve (12) is insufficient to satisfy the

total of valid consumer restitution claims, the administration fee identified in paragraph thirteen (13), and the funds represented by the uncashed checks identified in paragraph eleven (11), Defendant acknowledges that Plaintiff's reliance on the information supplied by Defendant constitutes mistake within the meaning of Trial Rule 60(B)(1) and, accordingly, this Consent Judgment may be modified.

PRIVATE CAUSES OF ACTION NOT WAIVED

20. Execution of this Consent Judgment shall not constitute a waiver of any private cause of action which any individual could assert against Defendant in a court of competent jurisdiction.


CONTINUING JURISDICTION

21. The Court shall retain jurisdiction for the purpose of issuing such orders as may be necessary to interpret or enforce the provisions herein.

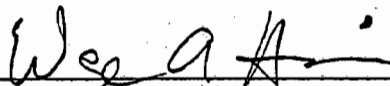
IN WITNESS THEREOF, a duly authorized officer of Blossom Chevrolet, Inc., and Ronald C. Smith and William N. Ivers, attorneys for Defendant, have signed this Consent Judgment on behalf of Defendant and on behalf of its agents, representatives, employees, successors, assigns, and all persons acting on its behalf, through any corporate business name or device; and Deputy Attorneys General Mary M. Brown and Wayne A. Harris have signed this document on behalf of Plaintiff, the State of Indiana.

FOR THE STATE OF INDIANA:

PAMELA CARTER
Attorney General of Indiana
Atty. No. 0004242-49

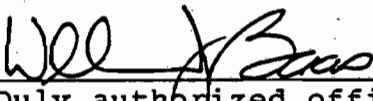
By: 
Mary M. Brown
Deputy Attorney General
Atty. No. 0004818-49

This 27th day of January, 1994.

By: 
Wayne A. Harris
Deputy Attorney General
Atty. No. 0015452-49

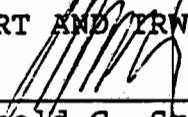
This 27th day of January, 1994.

FOR BLOSSOM CHEVROLET, INC.

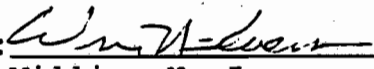
By: 
Duly authorized officer
Blossom Chevrolet, Inc.
WILLIAM J. BAAS, PRESIDENT
(print name)

This 24th day of January, 1994.

STEWART AND IRWIN

By: 
Ronald C. Smith
Atty. No. 387-49

This 26th day of January, 1994.

By: 
William N. Ivers
Attorney for Defendant
Atty. No. 0011592-49

JUDGMENT

Judgment is Granted in favor of Plaintiff, the State of Indiana, against Defendant, Blossom Chevrolet, Inc. for injunctive relief, restitution and costs pursuant to the terms agreed to by the parties to this CONSENT JUDGMENT.

ORDERED, ADJUDGED AND DECREED this ____ day of JAN 27 1994, 1994.

John M. Ryan

Judge, Marion Circuit Court

EXHIBIT "A"

ATTENTION: CUSTOMERS OF BLOSSOM CHEVROLET, INC.

If you purchased a motor vehicle from Blossom Chevrolet on or after January 1, 1986, and your contract shows you paid an INTANGIBLES TAX, you may be entitled to a refund of that charge. A court approved settlement between the Office of Indiana Attorney General Pamela Carter and Blossom Chevrolet requires the dealer to refund intangibles tax charges. By this settlement the dealer has not admitted any wrongdoing.

If you purchased a motor vehicle from Blossom Chevrolet on or after January 1, 1986, and your contract shows you paid an intangibles tax, send a copy of your contract, your current address and telephone number and your written request for a refund to the Consumer Protection Division of the Office of the Attorney General at the following address:

Office of the Attorney General
Blossom Chevrolet Refunds
402 West Washington Street IGCS 5th Floor
Indianapolis, Indiana 46204

ALL CLAIMS FOR REFUNDS ARE SUBJECT TO VERIFICATION
ALL CLAIMS MUST BE RECEIVED BY (insert date)